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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

IN RE: CATHODE RAY TUBE (CRT)
ANTITRUST LITIGATION,

Master File No. 3:07-cv-05944-SC

MDL No. 1917

This Documents Relates To:

ALL ACTIONS

**EXHIBIT A TO REPLY DECLARATION
OF PAMELA PHAM IN SUPPORT OF
THE STATE OF CALIFORNIA'S
MOTION FOR PERMISSIVE
INTERVENTION AND MOTION TO
RESTORE PUBLIC ACCESS TO 107
COURT RECORDS**

Hearing Date: September 25, 2015

Time: 10:00 A.M.

Courtroom: One, 17th Floor

Judge: Honorable Samuel Conti

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ELECTRONICALLY

FILED

*Superior Court of California,
County of San Francisco*

SEP 09 2014

Clerk of the Court

BY: JUDITH NUNEZ

Deputy Clerk

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SAN FRANCISCO
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15 **THE STATE OF CALIFORNIA, et al.;**
16 Plaintiffs,
17 **v.**
18 **CHUNGHWA PICTURE TUBES, LTD., et**
19 **al.,**
20 Defendants.
21
22

Case No. CGC -11-515786

[Related to Case No. CGC-11-515784]

**EXHIBIT 5 – DECLARATION OF
TYLER M. CUNNINGHAM IN
SUPPORT OF APPLICATION TO SEAL
DOCUMENTS**

Date:
Time:
Dept: 303
Judge: Richard A. Kramer

Action Filed: November 8, 2011

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TIANJIN SAMSUNG SDI CO., LTD.
13

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF SAN FRANCISCO
16

17
18 THE PEOPLE OF THE STATE OF
CALIFORNIA, et al.,

19 Plaintiffs,

20 vs.

21 CHUNGHWA PICTURE TUBES, et al.,
22

23 Defendants.
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Case No. CGC-11-515786

**DECLARATION OF TYLER M.
CUNNINGHAM IN SUPPORT OF
APPLICATION TO SEAL DOCUMENTS**

1 I, Tyler M. Cunningham, hereby declare as follows:

2 1. I am an attorney at Sheppard, Mullin, Richter & Hampton LLP, counsel for
3 Samsung SDI America, Inc., Samsung SDI Co., Ltd., Samsung SDI (Malaysia) Sdn. Bhd.,
4 Samsung SDI Mexico S.A. de C.V., Samsung SDI Brasil Ltda., Shenzhen Samsung SDI Co. Ltd.,
5 and Tianjin Samsung SDI Co., Ltd. (collectively "SDI"). I am a member of the bar of the State of
6 California. Except for those matters stated on information and belief, about which I am informed
7 and which I believe to be true, I have personal knowledge of the matters set forth herein, and could
8 and would testify competently to each of them.

9 2. SDI is a defendant in a related action filed in San Francisco Superior Court, *State of*
10 *California v. Samsung SDI Co., Ltd.*, No. CGC-11-515784. SDI is also a defendant in certain
11 actions consolidated by the Judicial Panel on Multidistrict Litigation and transferred to the
12 Northern District of California as *In re Cathode Ray Tube (CRT) Antitrust Litigation*, Case No.
13 07-5944 SC, MDL No. 1917 (the "MDL"). SDI has produced or disclosed to parties in the MDL
14 certain documents and information designated as either "Confidential" or "Highly Confidential"
15 pursuant to the Stipulated Protective Order entered by the Honorable Samuel Conti on June 18,
16 2008 (MDL Dkt. No. 306) (the "MDL Protective Order").

17 3. On October 30, 2013, Plaintiff the State of California ("Plaintiff") filed an Ex Parte
18 Application for an Order Sealing Portions of Reply Papers Regarding Final Approval of the
19 Chunghwa and Philips Settlements. Upon information and belief, Plaintiff concurrently lodged
20 conditionally under seal the Declaration of Emilio Varanini in Support of Reply to Opposition to
21 Motion and Motion for Final Approval of the Chunghwa and Philips Settlements ("Varanini
22 Declaration").

23 4. On August 14, 2014, Pamela Pham of the California Attorney General's Office,
24 counsel for Plaintiff, notified me that Plaintiff had lodged documents or information that SDI had
25 designated "Highly Confidential" with the Superior Court in October 2013.

26 5. I make this declaration on behalf of SDI to provide the basis for the Court to
27 maintain under seal Varanini Declaration Exhibit C, pp. 2-89. These pages consist of the
28 Samsung SDI Defendants' Supplemental Responses to Direct Purchaser Plaintiffs' First Set of

1 Interrogatories, Nos. 4 and 5 ("SDI Interrogatory Responses"), which SDI designated
2 "Confidential" pursuant to the MDL Protective Order.

3 6. The SDI Interrogatory Responses consist of, cite to, or identify confidential
4 business information about SDI's sales agreements with its customers, including information
5 concerning companies that remain important to SDI's competitive position. I am informed and
6 believe that public disclosure of this information would risk undermining SDI's business
7 relationships, causing harm with respect to its competitors and putting SDI at a competitive
8 disadvantage.

9 7. U.S. District Court Judge Samuel Conti has, on multiple occasions, ordered that the
10 SDI Interrogatory Responses be sealed. *See* Order Granting Direct Purchaser Plaintiffs'
11 Administrative Motion to Seal Documents (MDL Dkt. No. 1120); Order Re Administrative
12 Motions to File Under Seal (MDL Dkt. No. 1512); Order Granting Direct Purchaser Plaintiffs'
13 Administrative Motion to Seal Documents (MDL Dkt. No. 1698).

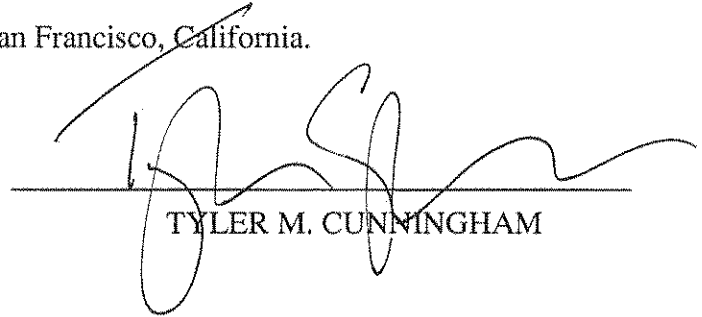
14 8. The SDI Interrogatory Responses are a voluminous document, comprising
15 approximately 87 pages. However, this confidential material is largely, if not entirely, irrelevant
16 to Plaintiffs' Motion for Final Approval of the Chunghwa and Philips Settlements. Under such
17 circumstances, sealing is particularly appropriate. *See, e.g., NBC Subsidiary (KNBC-TV), Inc. v.*
18 *Super. Court*, 20 Cal. 4th 1178, 1208 n.25 (1999) ("decisions have held that the First Amendment
19 does not compel public access to discovery materials that are neither used at trial nor submitted as
20 a basis for adjudication.").

21 9. Moreover, because Plaintiff submitted the SDI Interrogatory Responses in support
22 of a motion for settlement approval, and not as a basis for adjudicating the merits of Plaintiff's
23 substantive claims, there is no First Amendment right of public access with respect to this
24 document. *See, e.g., id; Mercury Interactive Corp. v. Klein*, 158 Cal.App.4th 60, 100 (2007)
25 ("public access to discovery materials that are not part of trial proceedings or filed in connection
26 with a motion on a substantive issue 'is favored neither by tradition nor by functional analysis.'")
27 (citation omitted). For this additional reason, the SDI Interrogatory Responses should be
28 maintained under seal.

1 I declare under penalty of perjury under the laws of California that the foregoing is true
2 and correct.

3 Executed on September 3, 2014 at San Francisco, California.

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TYLER M. CUNNINGHAM